

JOHN D. DINGELL  
15TH DISTRICT, MICHIGAN

CHAIRMAN EMERITUS  
COMMITTEE ON  
ENERGY AND COMMERCE

CO-CHAIR  
HOUSE GREAT LAKES  
TASK FORCE

MEMBER  
MIGRATORY BIRD  
CONSERVATION COMMISSION

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2215**

November 19, 2010

WASHINGTON OFFICE:

ROOM 2328  
RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-2215  
(202) 225-4071

DISTRICT OFFICES:

19855 WEST OUTER DRIVE  
SUITE 103-E  
DEARBORN, MI 48124  
(313) 278-2936

23 EAST FRONT STREET  
SUITE 103  
MONROE, MI 48161  
(734) 243-1849

301 WEST MICHIGAN AVENUE  
SUITE 305  
YPSILANTI, MI 48197  
(734) 481-1100

The Honorable Julius Genachowski  
Chairman  
U.S. Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**1813**

Dear Chairman Genachowski:

I understand that the Commission may vote to adopt data roaming rules during its forthcoming December meeting. While we share the common goal of enhancing consumer protection, and I applaud your leadership of the Commission in this area, I remain concerned that you continue to over-interpret the statutory authority granted to the Commission by the Congress. Further consultation with the Congress on this and other matters is desperately needed to avoid a glorious mess of litigation.

In brief, I am concerned that the Commission lacks sufficient statutory authority by which to enforce the data roaming rules proposed in its April 21, 2010, Order on Reconsideration and Second Further Notice of Proposed Rulemaking. As you are well aware, private mobile services provide data services to consumers and are, under section 332(c)(2) of the Communications Act of 1934, exempt from common carrier regulation.

The aforementioned Commission proposal seeks in essence to apply common carrier restrictions to mobile data roaming, thus treating what has heretofore been considered an information service as a telecommunications offering. As our correspondence of earlier this year indicates, I had – and continue to have – grave doubts about the Commission's statutory authority to classify broadband Internet access services as a telecommunications service, therefore subject to common carrier regulation under Title II of the Act. I fear the legal underpinnings of the Commission's proposal concerning mobile data roaming bear unfortunate analogy to those of its broadband access services proceeding.

Similarly, just as Title II regulation of broadband access services may restrict the expansion of communications infrastructure in this country, so, too, may common carrier regulation of mobile data roaming. I suspect the imposition of price controls on data roaming, consistent with sections 201 and 203 of the Act, may serve as a disincentive to mobile providers to expand or improve upon their existing infrastructure in favor of using arbitrarily priced roaming agreements with other carriers to expand their areas of service. This, as you may wisely agree, runs counter to the explicit goals of the

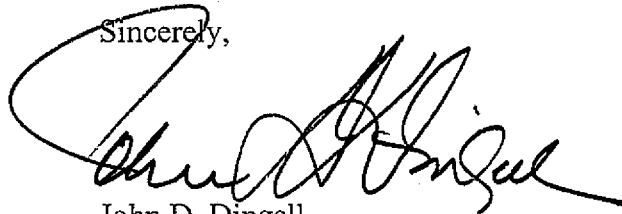
The Honorable Julius Genachowski  
Page 2

Telecommunications Act of 1996 and the National Broadband Plan of promoting wireless competition and expanding U.S. telecommunications infrastructure, respectively.

While I share the Commission's laudable goal of enhancing consumer protection, I believe the Commission must first consult with the Congress concerning its statutory ability to achieve this worthy end. Consequently, I hope the Commission, in contemplating further regulation of data roaming, will bear in mind the views I have expressed above. It is in the best interest of consumers that actions taken by the Commission be within the limits of its statutory authority in order to avoid litigation and uncertainty in industry. Should you have questions concerning this or other matters, please feel free to contact me directly or have a member of your staff contact Andrew Woelfling in my office at 202-225-4071.

With every good wish,

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over a large, stylized circular flourish.

John D. Dingell  
Member of Congress

cc: The Honorable Henry Waxman, Chairman  
Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce

The Honorable Rick Boucher, Chairman  
Committee on Energy and Commerce  
Subcommittee on Communications, Technology, and the Internet

The Honorable Cliff Stearns, Ranking Member  
Committee on Energy and Commerce  
Subcommittee on Communications, Technology, and the Internet

The Honorable Michael Copps, Commissioner  
U.S. Federal Communications Commission

The Honorable Robert McDowell, Commissioner  
U.S. Federal Communications Commission

The Honorable Mignon Clyburn, Commissioner  
U.S. Federal Communications Commission

The Honorable Julius Genachowski  
Page 3

The Honorable Meredith Atwell Baker, Commissioner  
U.S. Federal Communications Commission



Federal Communications Commission  
Washington, D.C.

December 13, 2010

The Honorable John D. Dingell  
U.S. House of Representatives  
2328 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Dingell:

Thank you for your letter expressing concern about the possible adoption of roaming obligations in the wireless data roaming proceeding, and expressing special interest in the Commission's statutory authority to adopt such obligations. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

Earlier this year, the Commission sought comment on data roaming and the extent of its authority to impose data roaming obligations on wireless service providers. In the *Notice*, the Commission stated its belief that regardless of whether the services a subscriber would access through roaming arrangements are telecommunications services or information services, the Commission has statutory authority to require automatic roaming for them. The *Notice* stated that if these services are telecommunications services, they could be subject to roaming obligations pursuant to Commission authority under Title II and Title III, and if they are information services, the Commission has the authority to promulgate roaming requirements under Title III and other provisions.

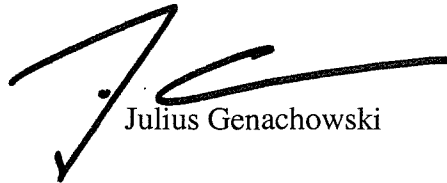
The Commission received a substantial record with respect to its statutory authority. Proponents of data roaming, such as Clearwire, SouthernLINC, T-Mobile USA, and U.S. Cellular, assert that the Commission's legal authority under Title III of the Communications Act to manage radio spectrum provides the Commission with a sufficient legal basis to require any entity utilizing radio spectrum to make available data roaming to other wireless service providers. Some proponents, including Cellular South, Leap Wireless, and MetroPCS, argue that the Commission also has authority under Title I and II of the Act. In contrast, AT&T and Verizon Wireless argue that the Commission lacks the legal authority to require data roaming under any provision of the Communications Act. There is also a dispute over the application of Section 332 of the Communications Act to data roaming.

The data roaming proceeding remains pending, and the staff is still in the process of reviewing the record and analyzing the arguments and options. I want to assure you that the

Page 2—The Honorable John D. Dingell

Commission will weigh carefully the legal and policy issues raised in the record before issuing a decision. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish at the end.

Julius Genachowski